

The Honorable Benjamin H. Settle  
Magistrate Judge J. Richard Creatura

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MICHAEL LATOURETTE,

Plaintiff,

vs.

WASHINGTON DEPARTMENT OF  
CORRECTIONS; ELDON VAIL,  
Secretary; BERNIE WARNER; LT.  
RIDDLE; SGT. RICHARDSON;  
AMBER MILLER; JOSEPH  
DARACUNAS; SUPT. RON FRAKER,  
CLALLAM BAY CORRECTIONS  
CENTER,

Defendants.

NO. CV12-00564 BHS/JRC

STIPULATED PROTECTIVE  
ORDER

NOTED FOR: DECEMBER 18,  
2013

**I. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

<u>Description</u>	<u>Attachment and Bates No.</u>
Investigative Report of Aggravated Assault 4/5/09	Attachment A to RPD No. 000001-000063
Hans Hale Central File	Attachment F to RPD No. 000001-001954
Hans Hale Hearing CD	Attachment G to RPD
Hans Hale Sanction Hearing Records	Attachment H to RPD No. 000001-00000147
Offender on Offender Violence at CBCC	Attachment I to RPD No. 000001-0000015
First Response Actions	Attachment J to RPD No. 000001-000012
Facility Plan – I and J Living Units at CBCC	Attachment L to RPD 1 page only
Hans Hale Behavior Log	Attachment N to RPD Supp. 000001-02
Hans Hale Chronos	Attachment O to RPD Supp. 000001-34
Acts of Violence Between Inmates at CBCC	Attachment P to RPD Supp. 000001-10
Restricted DOC Policy 410-040	Attachment Q to RPD Supp. 000001-198
Restricted DOC Policy 410.200	Attachment R to RPD Supp. 000001-159
Restricted DOC Policy 410.200	Attachment S to RPD Supp. 000001-47
Restricted DOC Policy 320 with Sanction Guidelines	Attachment U to RPD Supp. 000001-021
Personnel File of Joseph Daracunas	

1 Personnel File of Jason Earls  
2 Personnel File of Norman Erwick  
3 Personnel File of Amber Miller Bates  
4 Personnel File of Carroll Riddle  
5 Personnel File of Earl Richardson  
6 Plaintiff's medical records  
7 Plaintiff's Central File

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential material (as  
10 defined above), but also (1) any information copied or extracted from confidential material; (2)  
11 all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
12 testimony, conversations, or presentations by parties or their counsel that might reveal  
13 confidential material. However, the protections conferred by this agreement do not cover  
14 information that is in the public domain or becomes part of the public domain through trial or  
15 otherwise.  
16

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
19 or produced by another party or by a non-party in connection with this case only for  
20 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
21 disclosed only to the categories of persons and under the conditions described in this  
22 agreement. Confidential material must be stored and maintained by a receiving party at a  
23 location and in a secure manner that ensures that access is limited to the persons authorized  
24 under this agreement.  
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1           4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the designating party, a receiving party may disclose  
3 any confidential material only to:

4                   (a) the receiving party's counsel of record in this action, as well as employees of  
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;  
6

7                   (b) the officers, directors, and employees (including in house counsel) of the  
8 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
9 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
10 designated;  
11

12                   (c) experts and consultants to whom disclosure is reasonably necessary for this  
13 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
14 A);

15                   (d) the court, court personnel, and court reporters and their staff;

16                   (e) copy or imaging services retained by counsel to assist in the duplication of  
17 confidential material, provided that counsel for the party retaining the copy or imaging service  
18 instructs the service not to disclose any confidential material to third parties and to  
19 immediately return all originals and copies of any confidential material;  
20

21                   (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
23 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
24 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
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1 material must be separately bound by the court reporter and may not be disclosed to anyone  
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.  
5

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
7 referencing such material in court filings, the filing party shall confer with the designating  
8 party to determine whether the designating party will remove the confidential designation,  
9 whether the document can be redacted, or whether a motion to seal or stipulation and proposed  
10 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
11 the standards that will be applied when a party seeks permission from the court to file material  
12 under seal.  
13

## 14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
16 or non-party that designates information or items for protection under this agreement must take  
17 care to limit any such designation to specific material that qualifies under the appropriate  
18 standards. The designating party must designate for protection only those parts of material,  
19 documents, items, or oral or written communications that qualify, so that other portions of the  
20 material, documents, items, or communications for which protection is not warranted are not  
21 swept unjustifiably within the ambit of this agreement.  
22

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
24 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
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1 unnecessarily encumber or delay the case development process or to impose unnecessary  
2 expenses and burdens on other parties) expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated  
4 for protection do not qualify for protection, the designating party must promptly notify all  
5 other parties that it is withdrawing the mistaken designation.  
6

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
8 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
9 ordered, disclosure or discovery material that qualifies for protection under this agreement  
10 must be clearly so designated before or when the material is disclosed or produced.

11 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
12 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
13 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
14 contains confidential material. If only a portion or portions of the material on a page qualifies  
15 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
16 making appropriate markings in the margins).  
17

18 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
19 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
20 protected testimony, without prejudice to their right to so designate other testimony after  
21 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
22 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.  
23

24 (c) Other tangible items: the producing party must affix in a prominent place on  
25 the exterior of the container or containers in which the information or item is stored the word  
26

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
2 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the designating party’s  
5 right to secure protection under this agreement for such material. Upon timely correction of a  
6 designation, the receiving party must make reasonable efforts to ensure that the material is  
7 treated in accordance with the provisions of this agreement.  
8

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
15 original designation is disclosed.  
16

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
18 regarding confidential designations without court involvement. Any motion regarding  
19 confidential designations or for a protective order must include a certification, in the motion or  
20 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
21 conference with other affected parties in an effort to resolve the dispute without court action.  
22 The certification must list the date, manner, and participants to the conference. A good faith  
23 effort to confer requires a face-to-face meeting or a telephone conference.  
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1       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
2 intervention, the designating party may file and serve a motion to retain confidentiality under  
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
5 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and  
6 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
7 continue to maintain the material in question as confidential until the court rules on the  
8 challenge.  
9

10       7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
11 LITIGATION

12       If a party is served with a subpoena or a court order issued in other litigation that  
13 compels disclosure of any information or items designated in this action as  
14 “CONFIDENTIAL,” that party must:

15               (a) promptly notify the designating party in writing and include a copy of the  
16 subpoena or court order;

17               (b) promptly notify in writing the party who caused the subpoena or order to  
18 issue in the other litigation that some or all of the material covered by the subpoena or order is  
19 subject to this agreement. Such notification shall include a copy of this agreement; and  
20

21               (c) cooperate with respect to all reasonable procedures sought to be pursued by  
22 the designating party whose confidential material may be affected.  
23

24       8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25       If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
26 confidential material to any person or in any circumstance not authorized under this agreement,



1 the receiving party must immediately (a) notify in writing the designating party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
4 made of all the terms of this agreement, and (d) request that such person or persons execute the  
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.  
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7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
8 MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently  
10 produced material is subject to a claim of privilege or other protection, the obligations of the  
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
12 provision is not intended to modify whatever procedure may be established in an e-discovery  
13 order or agreement that provides for production without prior privilege review. Parties shall  
14 confer on an appropriate non-waiver order under Fed. R. Evid. 502.  
15

16 10. NON TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 days after the termination of this action, including all appeals, each receiving  
18 party must return all confidential material to the producing party, including all copies, extracts  
19 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
20 destruction.

21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
24 work product, even if such materials contain confidential material.  
25  
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1       The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: October 30, 2013 /s/ Jonathan L. McFarland  
5 Attorneys for Plaintiff

6 DATED: December 16, 2013 /s/ Patricia C. Fetterly  
7 Attorneys for Defendant

8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9 DATED: 12/30/13   
10 J. Richard Creatura  
11 United States District Magistrate Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Western District of Washington on [date] in the case of  
\_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it by  
the court]. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_